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Group Art Unit: 3634

REMARKS/ARGUMENTS

Claim Rejections - 35 U.S.C. § 102

1. The Examiner has not met the standard for anticipation under 35 U.S.C. § 102.

Claims 21, 22, 24-28, 31-33, and 37 have been rejected under 35 U.S.C. § 102(b) as being anticipated by DeFalco U.S. Patent No. 4,532,973 (DeFalco '973). This rejection is respectfully traversed.

The claimed invention is not anticipated under §102 unless each and every element of the claimed invention is found in the prior art. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The Examiner has failed to meet this standard.

The Examiner does not set forth in the rejection how each of the claim elements is met by DeFalco '973 reference and further has made material representations of fact with respect to the DeFalco '973 patent. In particular, claim 21 has the following limitations which the Examiner has roundly ignored and which are not shown in the DeFalco '973 reference:

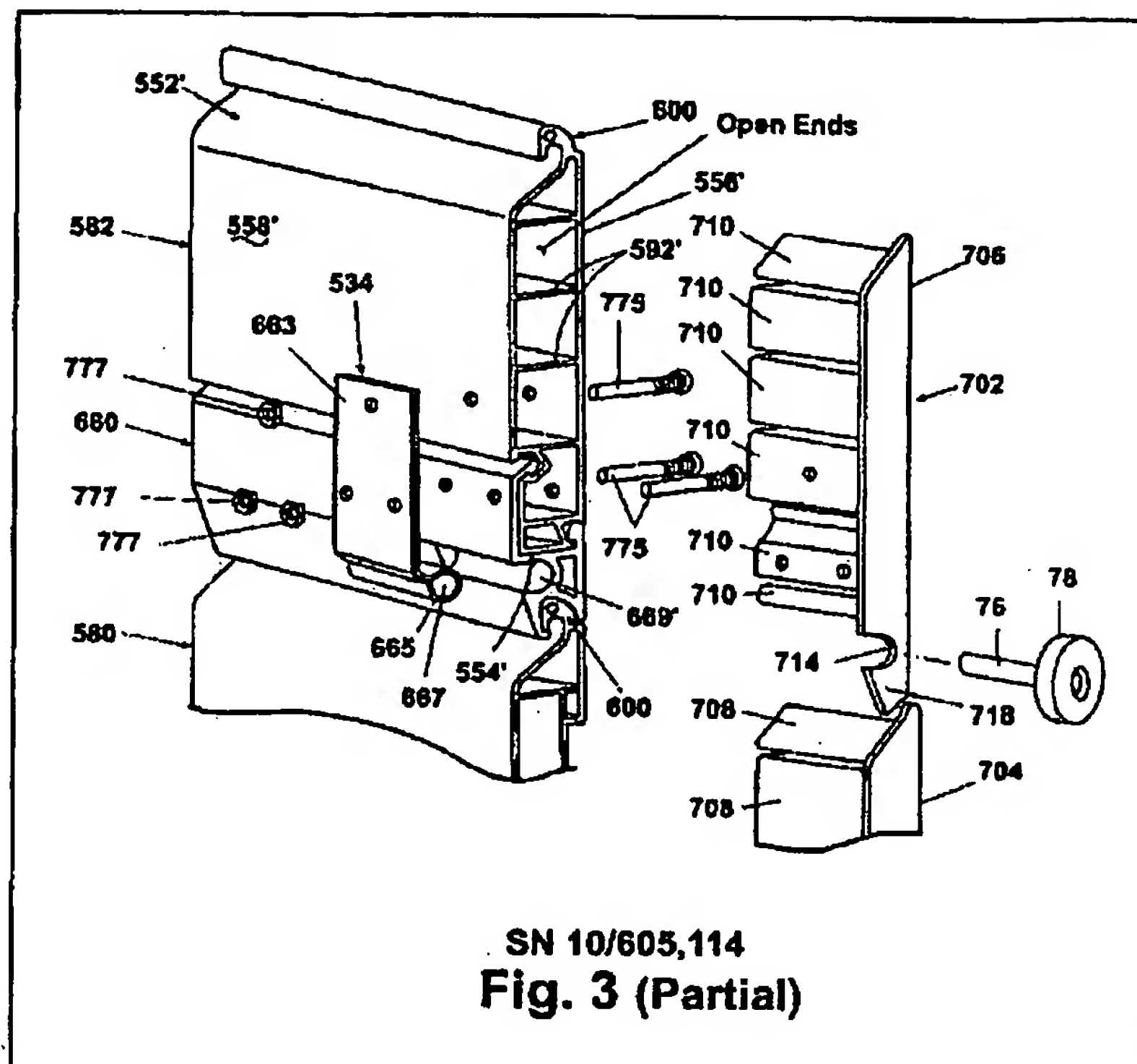
- Integrally formed elongated panels (582) having opposing interior (558') and exterior (556') walls with a relatively hollow interior and an upper (552') and a lower side (554') connecting the upper portion of the walls (558', 556') and the lower portion of the walls (558', 556'), respectively,
 - a mounting plate (663) having a socket (667) made of a wear resistant material attached to each of the lateral sides of the panels through mechanical fasteners (775, 777) that extend through the interior and exterior walls (558', 556') of the panels (582) and the socket (667) receives an axle (76) of the wheel assembly (76, 78) therein.
- (Annotations added.)

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These features are illustrated with respect to an abbreviated and annotated reproduction of Figure 3 inset below.

Referring to Figure 3, the integrally formed panels are shown with interior and exterior walls (558', 556') and upper and lower sides (552', 554') connecting the upper and lower portions of the walls (556', 558'). With respect to this feature, the Examiner's attention is directed to paragraph 62 of the specification (Paragraph 64 of the published application) as filed which reads as follows:



Referring to Figure 6, the intermediate panel 582 also comprises an upper side 552' and lower side 554', which connect outer wall 556' and inner wall 558' to form the basic panel structure. Strengthening ribs 592' extend between the outer and inner walls 556', 558'.

The Examiner has ignored the term "integrally formed" in claim 21, representing that "the process by which an apparatus is made is not given patentable weight within an apparatus claim".

The Examiner is incorrect in two respects. First, claim 21 is not an apparatus claim. It is an article claim. The Examiner should realize that there are four statutory classes of invention which include article claims. Secondly, the term "integrally formed" is not a process limitation in an article claim. It is structural. *Vanguard Products Corporation vs. Parker Hannifin Corporation*, 234 F.3d 1370; 57 U.S.P.Q.2D (BNA) 1087 (Fed. Cir. 2000).

We discern no error in the District Courts determination that "integral" was used in the '854 patent in its ordinary dictionary meaning. (Citation submitted). The '854 specification shows that the term was used to

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describe the product, and not as a designation of a specific manufacturing process.

234 F.3d 1372.

Like *Vanguard Products*, the term “integrally formed” is structural in nature not process related. The term “extruded” is a process limitation but not “integrally formed”. The Examiner’s refusal to give significance to the clear structural limitation of “integrally formed” is clear error.

The Examiner further has ignored the limitations of claim 21 with respect to the manner of fastening mounting plate (663) to the lateral sides of the panels through mechanical fasteners (775, 777) that extend through the interior and exterior (558’, 556’) panels. The Examiner fails to even mention this limitation in his rejection. DeFalco ‘973 patent discloses no such structure. The Examiner’s refusal to give significance to this explicit structural limitation is clear error.

Claims 22, 24-28, 31-33, and 37 all depend from claim 21 and define over DeFalco ‘973 in the same fashion as claim 21. In addition, claims 26 and 31 further define over DeFalco ‘973 in reciting that the panels have a uniform cross section between the lateral sides thereof with open ends. The Examiner has failed to point to any disclosure in DeFalco ‘973 to meet this limitation.

With respect to claims 27 and 32, these claims call for the panels to be integrally formed of a rigid plastic material. The Examiner has failed to identify any disclosure in DeFalco ‘973 that meets this limitation. The Examiner has vaguely referred to parts of the DeFalco panels as being formed of plastic but cannot meet the limitations of the panels being integrally formed of a rigid plastic material. The panels, which are defined in claim 21, contain integral interior and exterior walls with upper sides and lower sides. The DeFalco ‘973 reference has separate pieces for each of these items. See annotated Figure 3 above.

Claim 38 has been rejected under 35 U.S.C. § 102(b) as being anticipated by the Machill U.S. Patent No. 4,972,894 (Machill ‘894). This rejection is respectfully traversed.

Here again, the Examiner has utterly failed to identify disclosure in the cited prior art reference which meets all limitations of the rejected claim. The Examiner correctly describes the Machill ‘894 patent as disclosing a roll-up door comprising multiple stacked panels, a hinge assembly comprising an arcuate projection including a flange portion 26 at one end and a socket

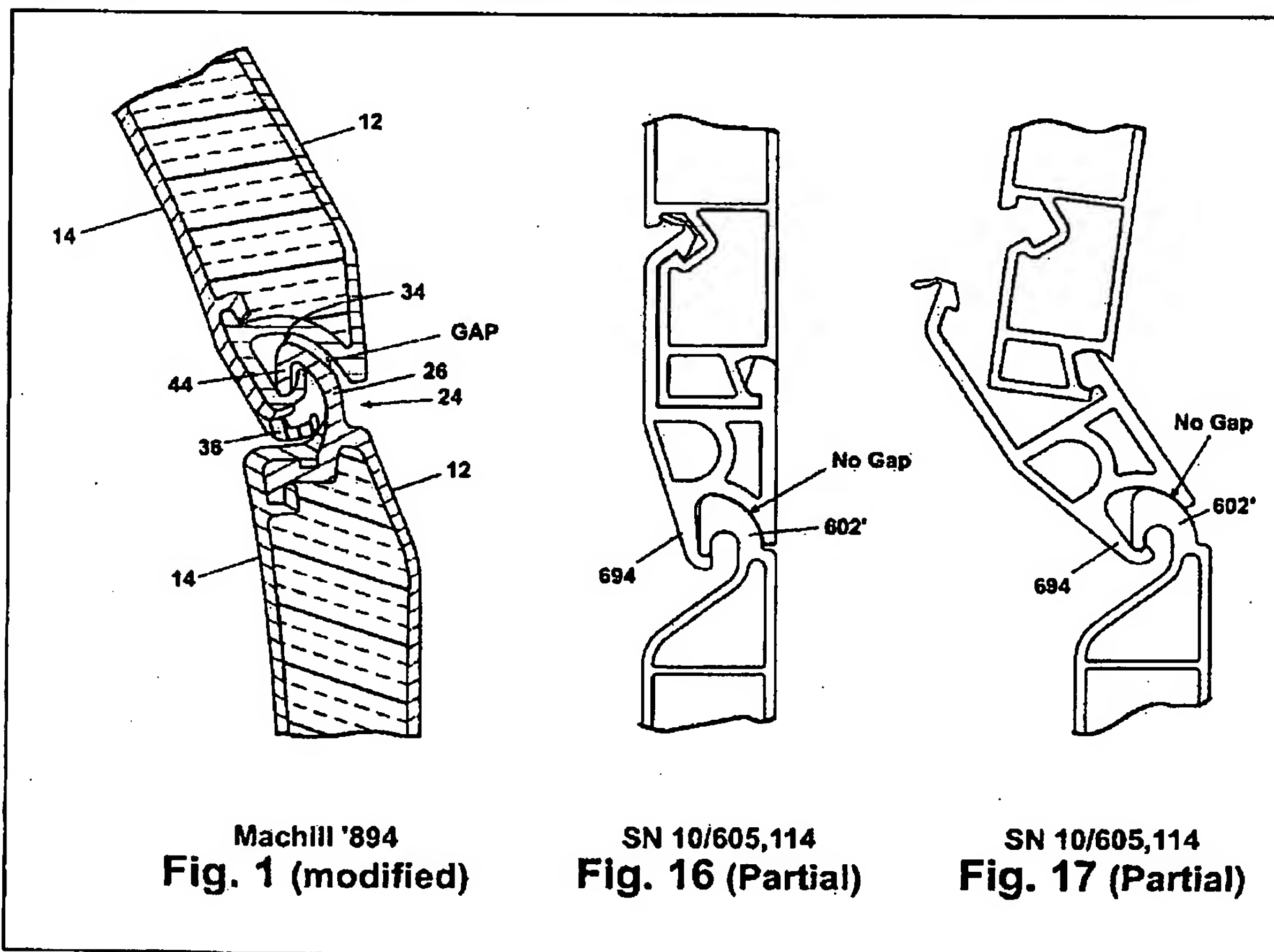
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34 at the other end and including a curved surface and a hooked portion. However, the claim is more limited than the examiner's statement of what is known prior art. The Examiner has refused to recognize the limitations in claim 38 which distinguish claim 38 over Machill '894. In particular, the Examiner has failed to give recognition to the following clear limitations in claim 38 which are not found in the Machill '894 patent:

- an elongated socket with an inner surface with a curvature complementary to the curvature of an arcuate projection; and
- the elongated arcuate portion fills the gap at the facing edges of the panels as the panels rotate with respect to each other about the hinge.

This significant feature is set forth in the two last paragraphs of claim 38. The significance of these features is illustrated in the inset graphic below which show enlarged



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portions of Figures 16 and 17 on the present application and a modified Figure 1 from Machill '894 rotated as in Figure 9 of Machill '894. See also Figs. 8 and 9 of Machill. Figs. 16 and 17 show the complementary relationship between the inner surface of the elongated socket and the curvature of the arcuate projection and the filling of the gap between the facing edges of the panels as the panels rotate about the hinge. Contrast this feature with the Machill '894 disclosure which discloses an inner surface with a curvature which is **not** complementary with the curvature of the arcuate projection so that when the Machill '894 panels are rotated with respect to one another, a gap is formed at the hinge. See also Fig. 9 of Machill '894.

It is clear from the foregoing that claim 38 is not anticipated by Machill '894.

Claim Rejections - 35 U.S.C. § 103

1. **The Examiner has failed to make a *prima facie* case of unpatentability under 35 U.S.C. § 103(a).**

Claims 9, 11, and 13-18 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over DeFalco '973 in view of Woernle U.S. Patent No. 2,184,879 (Woernle '879). This rejection is respectfully traversed.

First of all, the Examiner's representation of DeFalco '973 is faulty as demonstrated above. The Examiner cannot rely on this faulty description of DeFalco '973 to support this rejection.

The Woernle '879 patent relates to door latches of the type that include a resiliently positioned roller detent and are typically installed within the edges or stiles of wooden household doors. The latch mechanism is mounted within the edge of the door and the latch projects from the edge of the door in a conventional fashion.

DeFalco '973 and Woernle '879 are entirely different types of latches which bear no resemblance to the particular problems which both are facing. The DeFalco '973 roll-up door is concerned with mounting a latch in a bottom panel of a door in a conventional way. On the other hand, Woernle '879 is concerned with mounting a latch within the edge of the door, not on the

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face of a roll up panel as is conventional in the roll up door art. These are entirely different types of structures and do not relate to each other in any way.

The Examiner's assertion of obviousness is inappropriate since the Examiner has failed to satisfy the legal requirements for a *prima facie* case of obviousness. Moreover, the Examiner's asserted combination does not reach the claimed inventions described in each of the rejected claims.

A conclusion of obviousness must be based upon an Examiner's factual findings. "The factual predicates underlying an obviousness determination include the scope and content of the prior art, the differences between the prior art and the claimed invention, and the level of ordinary skill in the art." *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998).

To establish a *prima facie* case of obviousness, three basic criteria must be met:

1. There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.
2. There must be a reasonable expectation of success.
3. The prior art reference must teach or suggest all the claimed limitations.

In re Vaack, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See also, MPEP 706.02(j) and 2143-2143.03.1

In order to tenably combine references, there must be some suggestion in the references or generally available knowledge in order to make a tenable combination of disclosures. *In re Sang-Su Lee*, 277 F.3d 1338, 56 USPQ2d 1430 (Fed. Cir. 2000); *Ecolochem, Inc. v. Southern*

1 According to the MPEP, the Examiner should identify (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate, (B) the difference or differences in the claim over the applied reference(s), (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and (D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification. MPEP 706.02(j).

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California Edison Company, 277 F.3d. 1361, 56 USPQ2d 1065 (Fed. Cir. 2000). As aptly stated by Judge Newman in *Sang-Su Lee*;

...The patent examination process centers on prior art and the analysis thereof. When patentability turns on question of obviousness, the search for an analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. . . .

"The factual inquiry whether to combine references must be thorough and searching." [Citation omitted] It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions and cannot be dispensed with. ... *In re Dembiczak* 175 F.3d. 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against subtle but powerful attraction of a hindsight based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.")

If any one of the obviousness criteria is not met, then a *prima facie* case of obviousness has not been made. In the present case, the rejection fails to meet several of the criteria, rendering the rejection unsustainable and the inventions of claims 9, 11, and 13-18 patentable. An analysis of the criteria supports this conclusion.

The Examiner has failed to demonstrate combinability of these references by objective evidence as required by *In re Sang-Su Lee, supra*. The Examiner has merely stated that it would be obvious to modify the door of DeFalco for recessing the door latch within the door panel as taught by Woernle. The Examiner has further stated that this combination would more securely and easily align and connect the latch members to the bottom panel. This conclusory statement of a speculative advantage after the combination is made is not a suggestion in either of the references. Nor is it objective evidence. It is simply a conclusory statement by the Examiner and does not meet the standard of combinability required by *In re Sang-Su Lee* and by the MPEP. The Examiner has not made out a *prima facie* case for combining the DeFalco '973 and the Woernle '879 references under *In re Sang-Su Lee, supra*. For this reason, the rejection under 35 U.S.C. § 103(a) fails.

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Further, it is inappropriate to combine the DeFalco '973 and Woernle '879 references for the following reasons:

- 1 The DeFalco '973 and the Woernle '879 references come from different fields of endeavors. There is virtually no relationship between DeFalco's overhead door latch and the Woernle roll-up door jam roller type door latch. They are entirely different types of latches with the only similarity being the generic term "latch". Whereas Woernle '879 is concerned with a roller type detent mechanism which is mounted within the edge of the door, DeFalco '973 discloses a conventional hook latch which is pivotally mounted to a bottom panel of the door and is manually operated by a handle. These two types of latches are significantly different.
- 2 There is no suggestion in DeFalco '973 of the desirability of mounting a latch plate with a recess in the outer wall of the bottom panel. Woernle '879 discloses no problem that needs to be solved with respect to the mounting of a conventional door latch.
- 3 The Woernle '879 roller detent mechanism is mounted within the edge of the door and not in a recess in an outer wall of the door panel. In other words, Woernle '879 mounts the roller detent latch within the door itself rather than on the recessed wall of the door.
- 4 The Examiner's statement of recessing the door latch within the door panel to more securely and easily align and connect the latch member to the bottom panel is without any foundation in the references and is not correct. The latch is secure when it is fastened to the door by bolts. The indentation has nothing to do with securely connecting the latch to the bottom panel.

There is nothing in either of the references which disclose or even suggest that one could more easily align and connect latch members to the bottom panel by placing the latch members within a recess in the outer wall of the door.

However, even if the combination of DeFalco '973 and Woernle '879 were to be made, however untenably, it still would not reach Applicant's invention of claims 9, 11, and 13-18.

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Claim 13 further defines over the alleged combination of DeFalco '973 and Woernle '879 in that it defines the mounting support as comprising extruded walls (592) extending between the latch recess (585) and the interior wall (558) and arranged in spaced pairs defining a channel therebetween in which a fastener (775) can be received. See Fig. 18 above. This concept is not disclosed in the Examiner's alleged combination of DeFalco '973 and Woernle '879.

Claim 14 depends from claim 15 and further defines over the alleged combination of DeFalco '973 and Woernle '879 in defining the spacing of the extruded walls (592) such that the head of a mechanical fastener (775) used to fasten the latch assembly to the bottom panel will overlie at least a portion of at least one of the walls (592). This concept is not disclosed in the Examiner's alleged combination of DeFalco '973 and Woernle '879.

Claim 16 further distinguishes over the alleged combination of DeFalco '973 and Woernle '879 in that it calls for a backing plate recess (586) on the interior wall (558) and at least part of the backing plate recess (586) is opposite a portion of the latch recess (585). See Fig. 18 above. This concept is not disclosed in the Examiner's alleged combination of DeFalco '973 and Woernle '879. The Examiner has ignored this clear limitation in claim 16 in rejecting this claim over the alleged combination of DeFalco '973 and Woernle '879.

Claim 17 depends from claim 16 and further defines over the alleged combination of DeFalco '973 and Woernle '879 in that it calls for the mounting supports (592) to extend between the latch recess (585) and the backing plate recess (586). This concept is lacking from the Examiner's alleged combination of references.

Claim 18 depends from claim 9 and further defines over the alleged combination of DeFalco '973 and Woernle '879 in that it calls for a reflector recess formed in the exterior wall located above the latch recess and of a size to receive therein a conspicuity reflector. See Fig. 18 above. The alleged combination of DeFalco '973 and Woernle '879 would not have this recess either. The Examiner has again ignored a clear claim limitation.

In view of the foregoing, it is evident that claims 9, 11, and 13-18 are not obvious over the DeFalco '973 in view of Woernle '879 under 35 U.S.C. § 103(a).

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Claim 12 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over DeFalco '973 in view of Woernle '879 and further in view of the Yane U.S. Patent No. 5,421,627. This rejection is respectfully traversed.

The alleged combination of DeFalco '973, Woernle '879 and Yane '627 is traversed. There is no basis for making this alleged combination of references. The Examiner has cited no evidence to support the alleged combination of references.

The reasons for the uncombinability of DeFalco '973 and Woernle '879 have been discussed above and are believed equally applicable here. The Yane '627 patent discloses a latch mechanism for securement to an edge portion of a closure element, for example, a sliding door. Like Woernle '879, the latch mechanism is mounted to the edge or style of the door either on the style or within the style as in Woernle '879. Unlike Woernle '879, the latch mechanism is slidable in a vertical direction for engaging a keeper secured to a door jam. Although Yane '627 relates to a door latch, as does DeFalco '973 and Woernle '879, the similarities end there. The Yane '627 reference relates to a different art than Woernle '879 and is considerably different art than the DeFalco '973 reference. Indeed, the Examiner has given no basis for making the alleged combination. The Examiner's conclusory statement with respect to the Examiner's perceived benefit of making the alleged combination is not evidence and is not a reason for making the alleged combination as required by *In re Sang-Su Lee, supra*. Simply stating a perceived benefit to the combination, does not satisfy the *Vaeck* standard for establishing a *prima facie* case of obviousness under 35 U.S.C. § 103. There is simply no suggestion in any of the references in order to make a tenable combination of the disclosures as required by *In re Sang-Su Lee, supra*.

Even if the Examiner's alleged combination of DeFalco '973 and Woernle '879 with Yane '627 could be made, however untenably, it still would not reach Applicant's claimed invention. Claim 12 depends from claim 11 and defines over the Examiner's alleged combination of DeFalco '973 and Woernle '879 in the same fashion as claim 11 for all of the reasons set forth above with respect to the Examiner's rejection of claim 11. Further, the alleged combination of Yane '527 with DeFalco '973 and Woernle '897 would not meet the limitations of claim 12 which calls for an alignment indicia on the front wall of the panel for use in laterally

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aligning the latch assembly relative to the bottom panel. The alleged combination of references would at best have alignment indicia on the edge of the DeFalco door panel not on the face. The Examiner's alleged combination of Yane '527 with DeFalco '973 and Woernle '897 fails not only the test of combination but also the test of meeting the claim limitations, and thus does not meet the *Vaech* standard for establishing a *prima facie* case of obviousness under 35 U.S.C. § 103.

Thus, claim 12 is not obvious under 35 U.S.C. § 103(a) over DeFalco '973 in view of Woernle '879 and Yane '627.

Claims 19 and 20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over DeFalco '973 in view of Woernle '879 and further in view of the Miller et al. U.S. Patent No. 6,431,605 (Miller et al. '605). This rejection is respectfully traversed.

The alleged combination of DeFalco '973 in view of Woernle '879 and Miller et al. '605 is traversed. There is no rational basis for making the alleged combination and the Examiner has given none. The uncombinability of DeFalco '973 in view of Woernle '879 has been discussed above and is believed equally applicable here. Miller et al. '605 discloses a reflector bracket mounted on a truck fender in an orientation perpendicular to a road surface. The reflector bracket is mounted to a fender mounting post that has a reflector mounted thereon.

The Examiner has failed to establish a *prima facie* case of obviousness with the combination of these references in view of *Vaech*. There is no disclosure in any of the references of the desirability of mounting a reflector to a roll up door. The Examiner has not supported his alleged combination of references with any reasons other than the conclusory statement "in order to improve the safety of the assembly." This conclusory statement which the Examiner has drawn from his concept of the alleged combination of references is not evidence of the appropriateness of the combination or a reason as to why the combination is appropriate to make. It is simply a conclusory statement the Examiner has conjured up in an attempt to justify an inappropriate combination of references. The combination of Miller et al. '605 with DeFalco '973 and Woernle '879 does not meet the *In re Sang-Su Lee, supra*, test.

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Even if the alleged combination Miller et al. '605 with DeFalco '973 and Woernle '879 were to be made, however untenably, it would not teach or suggest the claimed invention of claim 19. The alleged combination, at best, would mount the Miller et al. '605 reflector bracket to one of the door panels, presumably the lower door panel although that in of itself is not suggested by any of the references. The alleged combination of Miller et al. '605 with DeFalco '973 and Woernle '879 would not reach claim 19 because it does not disclose multiple integrally formed elongated panels which are formed by upper and lower sides connected to an upper portion of the walls and a lower portion of the walls as set forth above with respect to the rejection of claim 9 over the alleged combination of DeFalco '973 and Woernle '879. The Examiner's alleged combination of references does not meet this limitation.

Further, the alleged combination of Miller et al. '605 with DeFalco '973 and Woernle '879 does not have a reflector recess formed in an exterior wall of a door panel. Nor would it have a recess formed in a bottom panel as required by claim 19. This feature is shown in inset Figure 18 above as item 587.

Claim 20 depends from claim 19 and defines over the alleged combination of DeFalco '973, Woernle '879 and Miller et al. '605 in the same manner as claim 19. In addition, claim 20 further defines over the Examiner's alleged combination in calling for a bottom panel having a latch recess in the exterior wall thereof at a bottom portion thereof, the latch assembly is mounted in the latch recess, and the reflector recess is positioned above the latch recess. The Examiner has failed to show any disclosure of this arrangement of recesses in the alleged combination.

In view of the foregoing, it is evident that the Examiner has failed to make a *prima facie* case of unpatentability of claims 19 and 20 over the alleged combination of DeFalco '973, Woernle '879 and Miller et al. '605. Claims 19 and 20 are clearly patentable over this combination of references.

Claims 29, 30, and 34-36 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over DeFalco '973 in view of the Jarvis et al. U.S. Patent No. 5,411,782 (Jarvis et al. '782). This rejection is respectfully traversed.

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The alleged combination of DeFalco '973 with Jarvis et al. '782 is traversed. There is no basis for making the alleged combination of references. The Examiner has given no reasons for making the alleged combination of references. The Jarvis et al. '782 reference discloses the use of end caps within a plurality of plastic panels or planks that are connected to one another in side by side configuration for use, for example, in swimming pool covers. Applicant can find no reference in the Jarvis et al. '782 patent relating to a door panel. However, Applicants acknowledge that providing end caps in extruded panels is commonly known in the art of door panels. An extruded door panel has a uniform cross section and has open side edges that are closed by end caps. Jarvis et al. '782 does not teach this concept with respect to a door panel although Applicant acknowledges this teaching in the prior art.

However, DeFalco does not disclose extruded door panels as pointed out above. Thus, the alleged combination of DeFalco '973 and Jarvis et al. '782 is an inappropriate combination of references. The Examiner has not given any reasons as to why DeFalco '973 door panels, which are not extruded, would have end caps.

However, even if the alleged combination of DeFalco '973 and Jarvis et al. '782 were made, however untenably, it still would not reach Applicant's claimed invention. Claims 29 and 30 depend from claim 26 and define over the alleged combination of DeFalco '973 and Jarvis et al. '782 in the same fashion as claim 26. Claim 26 was rejected as anticipated by DeFalco '973. The Jarvis et al. '782 patent does not add the deficiencies of DeFalco '973 to meet the limitations of claim 26.

Claim 30 depends from claim 29 and calls for a mounting plate through which sockets are mounted to the panels and the mounting plates are fastened to the panels with mechanical fasteners that extend through the exterior and interior walls, through the mounting tabs of the end caps and through the socket mounting plate. The limitation is illustrated in the annotated Fig. 3 above. The Examiner has ignored these clear limitations in claim 30. The alleged combination of DeFalco '973 and Jarvis et al. '782 would not meet these clear limitations.

Claims 34-36 depend from claim 31 which was rejected over the DeFalco '973 patent. Claims 34-36 define over the alleged combination of DeFalco '973 and Jarvis et al. '782 in the

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same manner that claim 31 defines over DeFalco '973 as set forth above. Jarvis et al. '782 does not add the deficiencies of DeFalco '973 set forth above with respect to claim 31 and thus the alleged combination of DeFalco and Jarvis et al. '782 cannot meet the limitations of claims 34-36.

In addition, claim 35, like claim 30, calls for a mounting plate through which sockets are mounted to the panels and the mounting plates are fastened to the panels with mechanical fasteners that extend through the exterior and interior walls, through the mounting tabs of the end caps and through the socket mounting plate. This concept is not disclosed in the Examiner's alleged combination of references of DeFalco '973 with Jarvis et al. '782 and the Examiner has made no representation that it is.

Therefore, claims 29, 30, and 34-36 are not obvious under 35 U.S.C. § 103(a) over DeFalco '973 in view of the Jarvis et al. '782 patent. The Examiner has failed to make a *prima facie* case of unpatentability of these claims over the DeFalco '973 with Jarvis et al. '782 references. The examiner has not met his burden under *Vaeck, supra*.

CONCLUSION

In view of the foregoing remarks, it is submitted that all of the claims in the application are in condition for allowance. Early notification of allowability is respectfully requested.

Respectfully submitted,

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